

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.4641 OF 2017

Shankarrao Shikshan Sanstha, Karajgaon, Dist. Amravati, through its Secretary and others.

Vs.

Santosh s/o Vasudeorao Ghatol and others.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri N. R. Saboo, Advocate for petitioners.

Shri R. L. Khapre, Advocate for respondent no.1.

Shri S. Bissa, Assistant Government Pleader for respondent no.2.

CORAM : A. S. CHANDURKAR, J.

DATE : DECEMBER 02, 2019.

Since arguable questions arise, **Rule.** Rule made returnable early.

Shri R. L. Khapre, learned counsel waives notice for respondent no.1 and S. Bissa, learned Assistant Government Pleader waives notice on behalf of respondent no.2.

Heard learned counsel on the question of interim relief. According to Shri. N. R. Saboo, learned counsel for the petitioners, there is no order of appointment issued to the respondent no.1 and he was working merely on clock hours basis. It is the further contention that pursuant to the advertisement dated 22.01.2015 the respondent no.1 had participated in the selection process in which the respondent no.2 was duly selected and appointed. Being aggrieved by her appointment and treating himself to be restrained by the Management from discharging duties, the appeal as filed by the respondent no.1 was not maintainable since appointment of the respondent no.2 did not amount to otherwise termination of service of the respondent no.1. It is therefore submitted that the impugned judgment recording a perverse finding that the due procedure for

appointment of the respondent no.1 on probation was duly followed is liable to be stayed.

Shri R. L. Khapre, learned counsel for the respondent no.1 submits that since 2010 the respondent no.1 is regularly discharging duties. He was sent for training for higher curricular studies by the petitioners and was also issued an experience certificate. Since the respondent no.2 has been appointed on the post on which the respondent no.1 was serving and had a right, it amounted to his otherwise termination in service.

Prima facie, it is seen that the findings recorded by the learned Presiding Officer in paragraph 10 that the respondent no.1 was duly appointed on probation by following the prescribed procedure is without any material documents on record. There are however documents on record which reveal that the respondent no.1 was sent for training for higher curricular studies and he has an experience certificate issued by the petitioners. This Court while issuing notice had directed the petitioners to deposit amount of Rs.3,00,000/- in this Court. Thus taking a prima facie view of the matter, by way of interim relief the execution of the impugned judgment directing reinstatement shall remain stayed. The respondent no.1 is however permitted to withdraw an amount of Rs.1,50,000/- subject to filing an undertaking in this Court that in case the writ petition is allowed that amount shall be repaid with interest at such rate, the Court may direct. The remaining amount shall be invested in fixed deposit. Consequently, Civil Application (CAW) No.2863 of 2019 is disposed of.

JUDGE